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OGC 76-5294

27 September 1976

Executive Registry

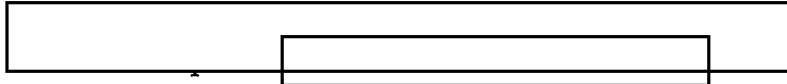
76-9955/5

MEMORANDUM FOR: Executive Secretary

FROM: Anthony A. Lapham
General Counsel

OGC Has Reviewed

SUBJECT:

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Thank you for your notes of conversation with Ratliff and Hoskinson. Nothing in these notes alters the views and opinions I expressed in OGC 76-5153. With respect to the observations made by Ratliff and Hoskinson, my comments are as follows:

a. I already understood that the purpose of Ratliff's note to the DCI was to alert the DCI to the possibility that the Section 662 issue might be raised when the OAG considers the proposed covert action. The purpose of OGC 76-5153 was to give the DCI my own analysis of that issue in advance of the OAG meeting.

b. Adherence to Section 662 is a primary responsibility of CIA. The statute does not relate in any fashion to the State Department. Consequently, I see no need to consult the State Legal Adviser. While it would be entirely appropriate to consult with Justice on some of the larger questions of interpretation that arise under Section 662, absent unusual circumstances I do not believe we should undertake to consult in particular cases as to the need for a Presidential finding.

c. I do not know what is meant by "marginal." If the thought is that the proposed covert action is marginal in terms of its value or the likelihood of its success, that is a policy concern and not a concern of OGC. If the thought is that the proposal is marginal in terms of the need for a Section 662 finding, I disagree. While the question is not wholly free of doubt, I think that the arguments in favor of a finding are much stronger than the arguments to the contrary. But even if I am wrong about that, and even if there are serious legal doubts about the need for a finding, I think the correct CIA approach is to resolve those doubts in favor of the safer course of obtaining a finding. Further, the idea of an "advisory to the President," as apparently suggested by Ratliff and Hoskinson, makes no sense to me in the statutory context. The


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mandate of the statute is not satisfied if the President is simply informed about an activity. The requirement is that the President find that the proposed activity is a matter of national security importance.

d. I have finished a redraft of the proposed "Covert Action Review and Approval Criteria" and returned that paper to the DDO. Presumably these guidelines, in final, will soon be in the hands of the OAG Working Group. You should understand, however, that the question of what matters should be submitted to OAG is not a question about which it is possible to be mathematically precise. The guidelines will help, but they will not eliminate differences of interpretation or disagreements about what matters are appropriate for OAG review and Presidential findings pursuant to Section 662.

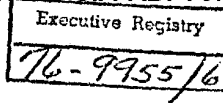
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Anthony A. Lapham

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Office of General Counsel



18 October 1976

NOTE FOR: Executive Secretary

Ben:

I am returning these papers per our conversation on 16 October. I doubt the need for another note to the Director on this subject, but if there is a need the note should say simply that we have taken the position that a Presidential finding is required with respect to the proposed covert action, and that we have backup papers to support the position.



Anthony A. Lapham

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